

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION**

DABRESHA MAGEE

PLAINTIFF

v.

CIVIL ACTION NO. 2:23-cv-199-TBM-RPM

FAST PACE MEDICAL CLINIC, PLLC

DEFENDANT

ORDER

This matter comes before the Court on the Defendant's Motion to Dismiss Plaintiff's Amended Complaint [5], filed on January 11, 2024, and the Defendant's Motion to Dismiss Plaintiff's Second Amended Complaint [13], filed on February 14, 2024.


Pursuant to the Plaintiff's Amended Complaint [23], filed on April 22, 2024, the Court finds that the Defendant's Motion to Dismiss [5] is MOOT. The Amended Complaint [23] renders the Motion [5] of no legal effect because the Amended Complaint [23] does not refer to, adopt, or incorporate by reference the Original Complaint—the state court Amended Complaint [1-4]. *King v. Dogan*, 31 F.3d 344, 346 (5th Cir. 1994) (finding that an amended complaint supersedes the original complaint and renders it of no legal effect unless the amended complaint specifically refers to and adopts or incorporates by reference the earlier pleading). Therefore, the pending Motion to Dismiss [5] is moot. *See New Orleans Association of Cemetery Tour Guides and Companies v. New Orleans Archdiocesan Cemeteries*, 56 F.4th 1026, 1034 (5th Cir. 2023) (“Because the first amended complaint is nullified, we cannot consider—and thus must dismiss—an appeal . . . stemming from said complaint.”).

Moreover, the Court finds that the Defendant's Motion to Dismiss Plaintiff's Second Amended Complaint [13] is DENIED as premature. The Motion [13] was filed on February 14, 2024, yet the Motion to Amend Complaint [9] was not granted until April 10, 2024, and the Amended Complaint [23] was not filed until April 22, 2024. Accordingly, at the time of filing, there was no operative second amended complaint to dismiss.

IT IS THEREFORE ORDERED that Defendant's Motion to Dismiss Plaintiff's Amended Complaint [5] is DENIED as MOOT.

IT IS FURTHER ORDERED that Defendant's Motion to Dismiss Plaintiff's Second Amended Complaint [13] is DENIED WITHOUT PREJUDICE. Defendant may refile a motion seeking dismissal of the Plaintiff's Amended Complaint [23].

THIS, the 23rd day of April, 2024.


TAYLOR B. McNEEL
UNITED STATES DISTRICT JUDGE